



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2016-0294; FRL-9951-52-Region 4]

#### Air Plan Approval; Alabama; Cross-State Air Pollution Rule

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving portions of the October 26, 2015, State Implementation Plan (SIP) submittal from Alabama concerning the Cross-State Air Pollution Rule (CSAPR). Under CSAPR, large electricity generating units (EGUs) in Alabama are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NO<sub>x</sub>) and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>). This action approves the incorporation into Alabama's SIP of the state's regulations requiring Alabama EGUs to participate in new CSAPR state trading programs for annual NO<sub>x</sub> and SO<sub>2</sub> emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. These CSAPR state trading programs are substantively identical to the CSAPR federal trading programs except with regard to the provisions allocating emission allowances among Alabama units. EPA is approving the portions of the SIP revision concerning these CSAPR state trading programs because these portions of the SIP revision meet the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of these portions of the SIP revision automatically eliminates Alabama units' obligations to participate in CSAPR's federal trading programs for annual NO<sub>x</sub> and SO<sub>2</sub> emissions under the

corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 and 2006 Fine Particulate Matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). Approval of these portions of the SIP revision fully satisfies Alabama's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state. This approval also addresses the judicial remand of the federally-established CSAPR Phase 2 SO<sub>2</sub> budget for Alabama. EPA is not acting at this time on the portion of Alabama's SIP submittal intended to replace Alabama units' obligations to participate in CSAPR's federal trading program for ozone-season NO<sub>x</sub> emissions under a separate CSAPR FIP.

**DATES:** This rule is effective [insert 30 days after date of publication in the Federal Register].

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No EPA-R04-OAR-2016-0294. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) web site. Although listed in the index, some information may not be publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through [www.regulations.gov](http://www.regulations.gov) or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday 8:30 a.m. to 4:30

p.m., excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Steven Scofield, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, Region 4, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Mr. Scofield can be reached by telephone at (404) 562-9034 or via electronic mail at [scofield.steve@epa.gov](mailto:scofield.steve@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background on CSAPR and CSAPR-related SIP revisions**

EPA issued CSAPR in July 2011 to address the requirements of CAA section 110(a)(2)(D)(i)(I) concerning interstate transport of air pollution.<sup>1</sup> As amended, CSAPR requires 28 Eastern states to limit their statewide emissions of SO<sub>2</sub> and/or NO<sub>x</sub> in order to mitigate transported air pollution unlawfully impacting other states' ability to attain or maintain three NAAQS: the 1997 ozone NAAQS, the 1997 annual PM<sub>2.5</sub> NAAQS, and the 2006 24-hour PM<sub>2.5</sub> NAAQS. The CSAPR emissions limitations are defined in terms of maximum statewide "budgets" for emissions of annual SO<sub>2</sub>, annual NO<sub>x</sub>, and/or ozone-season NO<sub>x</sub> by each covered state's large EGUs. The CSAPR state budgets are implemented in two phases of generally increasing stringency, with the Phase 1 budgets applying to emissions in 2015 and 2016 and the Phase 2 budgets applying to emissions in 2017 and later years. As a mechanism for achieving compliance with the emissions limitations, CSAPR established four federal emissions trading programs: a program for annual NO<sub>x</sub> emissions, a program for ozone-season NO<sub>x</sub> emissions, and two geographically separate programs for annual SO<sub>2</sub> emissions. CSAPR also established

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<sup>1</sup> Federal Implementation Plans; Interstate Transport of Fine Particulate Matter and Ozone and Correction of SIP Approvals, 76 FR 48208 (August 8, 2011) (codified as amended at 40 CFR 52.38 and 52.39 and subparts AAAAA through DDDDD of 40 CFR part 97).

FIP requirements applicable to the large electricity generating units in each covered state. The CSAPR FIP provisions require each state's units to participate in up to three of the four CSAPR trading programs.

CSAPR includes provisions under which states may submit and EPA will approve SIP revisions to modify or replace the CSAPR FIP requirements while allowing states to continue to meet their transport-related obligations using either CSAPR's federal emissions trading programs or state emissions trading programs integrated with the federal programs.<sup>2</sup> Through such a SIP revision, a state may replace EPA's default provisions for allocating emission allowances among the state's units, employing any state-selected methodology to allocate or auction the allowances, subject to timing conditions and limits on overall allowance quantities. In the case of CSAPR's federal trading program for ozone-season NO<sub>x</sub> emissions (or an integrated state trading program), a state may also expand trading program applicability to include certain smaller electricity generating units. If a state wants to replace CSAPR FIP requirements with SIP requirements under which the state's units participate in a state trading program that is integrated with and identical to the federal trading program even as to the allocation and applicability provisions, the state may submit a SIP revision for that purpose as well. However, no emissions budget increases or other substantive changes to the trading program provisions are allowed. A state whose units are subject to multiple CSAPR FIPs and federal trading programs may submit SIP revisions to modify or replace either some or all of those FIP requirements.

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<sup>2</sup> See 40 CFR 52.38, 52.39. States also retain the ability to submit SIP revisions to meet their transport-related obligations using mechanisms other than the CSAPR federal trading programs or integrated state trading programs.

States can submit two basic forms of CSAPR-related SIP revisions effective for emissions control periods in 2017 or later years.<sup>3</sup> Specific conditions for approval of each form of SIP revision are set forth in the CSAPR regulations. Under the first alternative – an “abbreviated” SIP revision – a state may submit a SIP revision that upon approval replaces the default allowance allocation and/or applicability provisions of a CSAPR federal trading program for the state.<sup>4</sup> Approval of an abbreviated SIP revision leaves the corresponding CSAPR FIP and all other provisions of the relevant federal trading program in place for the state’s units.

Under the second alternative – a “full” SIP revision – a state may submit a SIP revision that upon approval replaces a CSAPR federal trading program for the state with a state trading program integrated with the federal trading program, so long as the state trading program is substantively identical to the federal trading program or does not substantively differ from the federal trading program except as discussed above with regard to the allowance allocation and/or applicability provisions.<sup>5</sup> For purposes of a full SIP revision, a state may either adopt state rules with complete trading program language, incorporate the federal trading program language into its state rules by reference (with appropriate conforming changes), or employ a combination of these approaches.

The CSAPR regulations identify several important consequences and limitations associated with approval of a full SIP revision. First, upon EPA’s approval of a full SIP revision as correcting the deficiency in the state’s implementation plan that was the basis for a particular set of CSAPR FIP requirements, the obligation to participate in the corresponding CSAPR

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<sup>3</sup> CSAPR also provides for a third, more streamlined form of SIP revision that is effective only for control periods in 2016 and is not relevant here. *See* § 52.38(a)(3), (b)(3); § 52.39(d), (g).

<sup>4</sup> § 52.38(a)(4), (b)(4); § 52.39(e), (h).

<sup>5</sup> § 52.38(a)(5), (b)(5); § 52.39(f), (i).

federal trading program is automatically eliminated for units subject to the state's jurisdiction without the need for a separate EPA withdrawal action, so long as EPA's approval of the SIP is full and unconditional.<sup>6</sup> Second, approval of a full SIP revision does not terminate the obligation to participate in the corresponding CSAPR federal trading program for any units located in any Indian country within the borders of the state, and if and when a unit is located in Indian country within a state's borders, EPA may modify the SIP approval to exclude from the SIP, and include in the surviving CSAPR FIP instead, certain trading program provisions that apply jointly to units in the state and to units in Indian country within the state's borders.<sup>7</sup> Finally, if at the time a full SIP revision is approved EPA has already started recording allocations of allowances for a given control period to a state's units, the federal trading program provisions authorizing EPA to complete the process of allocating and recording allowances for that control period to those units will continue to apply, unless EPA's approval of the SIP revision provides otherwise.<sup>8</sup>

Certain CSAPR Phase 2 emissions budgets have been remanded to EPA for reconsideration.<sup>9</sup> However, the CSAPR trading programs remain in effect and all CSAPR emissions budgets likewise remain in effect pending EPA final action to address the remands. The remanded budgets include the CSAPR Phase 2 SO<sub>2</sub> emissions budget applicable to Alabama units under the federal CSAPR SO<sub>2</sub> Group 2 Trading Program.

In 2015, EPA proposed to update CSAPR to address Eastern states' interstate air pollution mitigation obligations with regard to the 2008 ozone NAAQS. Among other things, the proposed rule would amend the Phase 2 emissions budget applicable to Alabama units under

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<sup>6</sup> § 52.38(a)(6), (b)(6); § 52.39(j).

<sup>7</sup> § 52.38(a)(5)(iv)-(v), (a)(6), (b)(5)(v)-(vi), (b)(6); § 52.39(f)(4)-(5), (i)(4)-(5), (j).

<sup>8</sup> § 52.38(a)(7), (b)(7); § 52.39(k).

<sup>9</sup> *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

the CSAPR NO<sub>x</sub> Ozone Season Trading Program and would make technical corrections and nomenclature changes that would apply throughout the CSAPR regulations, including the CSAPR FIPs at 40 CFR part 52 and the CSAPR federal trading program regulations for annual NO<sub>x</sub>, ozone-season NO<sub>x</sub>, and SO<sub>2</sub> emissions at 40 CFR part 97.<sup>10</sup>

In the CSAPR rulemaking, EPA determined that air pollution transported from Alabama would unlawfully affect other states' ability to attain or maintain the 1997 and 2006 PM<sub>2.5</sub> NAAQS and the 1997 ozone NAAQS.<sup>11</sup> Alabama units meeting the CSAPR applicability criteria were consequently made subject to FIP provisions requiring participation in CSAPR federal trading programs for SO<sub>2</sub>, annual NO<sub>x</sub>, and ozone-season NO<sub>x</sub> emissions.<sup>12</sup> On October 26, 2015, Alabama submitted to EPA a SIP revision including provisions that, if all portions were approved, would incorporate into Alabama's SIP CSAPR state trading program regulations that would replace the CSAPR regulations for all three of these federal trading programs with regard to Alabama units for control periods in 2017 and later years. In a notice of proposed rulemaking (NPRM) published on June 28, 2016 (81 FR 41914), EPA proposed to approve portions of Alabama's October 26, 2015, SIP submittal designed to replace the CSAPR federal SO<sub>2</sub> and annual NO<sub>x</sub> trading programs. EPA did not propose to take action on the portion of the SIP submittal designed to replace the federal CSAPR ozone-season NO<sub>x</sub> trading program. The NPRM provides additional detail regarding the background and rationale for EPA's action. Comments on the NPRM were due on or before July 28, 2016. EPA received no adverse comments on the proposed action.

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<sup>10</sup> 80 FR 75706, 75710, 75757 (December 3, 2015).

<sup>11</sup> 76 FR at 48213.

<sup>12</sup> 40 CFR 52.38(a)(2), (b)(2); § 52.39(c); § 52.54(a), (b); § 52.55.

## **II. Incorporation by Reference**

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of ADEM Administrative Code rules 335-3-8-.07 through 335-3-8-.38 (establishing Alabama's "TR NO<sub>x</sub> Annual Trading Program") and 335-3-5-.06 through 335-3-5-.36 (establishing Alabama's "TR SO<sub>2</sub> Group 2 Trading Program"), effective November 24, 2015.<sup>13</sup> Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference by the Director of the Federal Register in the next update to the SIP compilation.<sup>14</sup> EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and/or at the EPA Region 4 Office (please contact the person identified in the "For Further Information Contact" section of this preamble for more information).

## **III. Final Actions**

EPA is approving the portions of Alabama's October 26, 2015, SIP submittal concerning the establishment for Alabama units of CSAPR state trading programs for annual NO<sub>x</sub> and SO<sub>2</sub>

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<sup>13</sup> EPA notes that ADEM Administrative Code rules 335-3-5-.06 through 335-3-5-.08 and 335-3-5-.11 through 335-3-5-.14 (state effective November 24, 2015) for the TR SO<sub>2</sub> Group 2 trading program have the same numeric regulatory citations as the regulations in the SIP for Alabama's existing CAIR SO<sub>2</sub> trading program as identified at 40 CFR 52.50(c) and that the ADEM Administrative Code rules 335-3-8-.07 through 335-3-8-.33 (with the exception of rules 335-3-8-.15, -.19, -.22, -.28, and -.31) (state effective November 24, 2015) for the TR NO<sub>x</sub> Annual trading program have the same numeric regulatory citations as the regulations in the SIP for Alabama's existing NO<sub>x</sub> Budget trading and the CAIR NO<sub>x</sub> Annual trading programs as identified at 40 CFR 52.50(c). The existing NO<sub>x</sub> Budget trading and CAIR regulations remain in the Alabama SIP and are not superseded by the TR regulations approved into the SIP in this final action even though these TR regulations share the same numeric citations. Therefore, the regulatory table at 40 CFR 52.50(c) retains the existing NO<sub>x</sub> Budget and CAIR SO<sub>2</sub> and NO<sub>x</sub> Annual trading programs and includes the TR SO<sub>2</sub> Group 2 and NO<sub>x</sub> Annual trading programs.

<sup>14</sup> 62 FR 27968 (May 22, 1997).

emissions for compliance periods in 2017 and later years. The revision adopts into the SIP the state trading program rules codified in ADEM Administrative Code rules 335-3-8-.07 through 335-3-8-.38 (establishing Alabama’s “TR NO<sub>x</sub> Annual Trading Program”) and 335-3-5-.06 through 335-3-5-.36 (establishing Alabama’s “TR SO<sub>2</sub> Group 2 Trading Program”).<sup>15</sup> These Alabama CSAPR state trading programs will be integrated with the federal CSAPR NO<sub>x</sub> Annual Trading Program and the federal CSAPR SO<sub>2</sub> Group 2 Trading Program, respectively, and are substantively identical to the federal trading programs except with regard to the allowance allocation provisions.<sup>16</sup> Following approval of these portions of the SIP revision, Alabama units therefore will generally be required to meet requirements under Alabama’s CSAPR state trading programs equivalent to the requirements the units otherwise would have been required to meet under the corresponding CSAPR federal trading programs, but allocations to Alabama units of CSAPR NO<sub>x</sub> Annual allowances for compliance periods in 2017 and later years will be determined according to the SIP’s allocation provisions at Alabama rule 335-3-8-.14 instead of EPA’s default allocation provisions at 40 CFR 97.411(a), 97.411(b)(1), and 97.412(a), and allocations to Alabama units of CSAPR SO<sub>2</sub> Group 2 allowances will be determined according to the SIP’s allocation provisions at Alabama rule 335-3-5-.13 instead of EPA’s default allocation provisions at 40 CFR 97.711(a), 97.711(b)(1), and 97.712(a). EPA is approving these portions of the SIP revision because they meet the requirements of the CAA and EPA’s regulations for

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<sup>15</sup> Consistent with the current CSAPR regulatory text, the Alabama rules use the terms “Transport Rule” and “TR” instead of the updated terms “Cross-State Air Pollution Rule” and “CSAPR”.

<sup>16</sup> EPA has proposed to make certain technical corrections to the CSAPR FIP and federal trading program regulations in order to more accurately reflect EPA’s intent as described in the CSAPR rulemaking and has also proposed to replace “TR” with “CSAPR” throughout the regulations (for example, “TR NO<sub>x</sub> Annual unit” would become “CSAPR NO<sub>x</sub> Annual unit”). *See* 80 FR 75706, 75758. Because the proposed technical corrections merely clarify and do not change EPA’s interpretations, where the proposed corrections would apply to a provision incorporated by reference in the Alabama rules, EPA would interpret the Alabama rules as reflecting the corrections. Further, EPA anticipates that if the proposed nomenclature updates are finalized, the final CSAPR federal regulations would explicitly provide that terms that include “CSAPR” encompass otherwise identical terms in approved SIP revisions that include “TR”.

approval of a CSAPR full SIP revision replacing a federal trading program with a state trading program that is integrated with and substantively identical to the federal trading program except for permissible differences with respect to emission allowance allocation provisions.

EPA promulgated the FIP provisions requiring Alabama units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program and the federal CSAPR SO<sub>2</sub> Group 2 Trading Program in order to address Alabama's obligations under CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS in the absence of SIP provisions addressing those requirements. Approval of the portions of Alabama's SIP submittal adopting CSAPR state trading program rules for annual NO<sub>x</sub> and SO<sub>2</sub> substantively identical to the corresponding CSAPR federal trading program regulations (or differing only with respect to the allowance allocation methodology) will correct the same deficiency in the SIP that otherwise would be corrected by those CSAPR FIPs. Under the CSAPR regulations, upon EPA's full and unconditional approval of a SIP revision as correcting the SIP's deficiency that is the basis for a particular CSAPR FIP, the obligation to participate in the corresponding CSAPR federal trading program is automatically eliminated for units subject to the state's jurisdiction (but not for any units located in any Indian country within the state's borders).<sup>17</sup> The approval of the portions of Alabama's SIP submittal establishing CSAPR state trading program rules for annual NO<sub>x</sub> and SO<sub>2</sub> emissions therefore will result in automatic termination of the obligations of Alabama units to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program and the federal CSAPR SO<sub>2</sub> Group 2 Trading Program. Further, when promulgating the FIP provisions requiring Alabama units to participate in those two CSAPR trading programs, EPA found that those FIP requirements would fully satisfy Alabama's obligation pursuant to CAA section

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<sup>17</sup> 40 CFR 52.38(a)(6); § 52.39(j); *see also* § 52.54(a)(1); § 52.55(a).

110(a)(2)(D)(i)(I) to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 and 2006 PM<sub>2.5</sub> NAAQS in any other state.<sup>18</sup> This approval of portions of Alabama's SIP revision as correcting the SIP's deficiency that was the basis for those FIP requirements therefore likewise fully satisfies the state's transport obligation with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS.

As noted in EPA's NPRM, the Phase 2 SO<sub>2</sub> budget established for Alabama in the CSAPR rulemaking has been remanded to EPA for reconsideration.<sup>19</sup> With the approval of these portions of the SIP revision as proposed, Alabama has fulfilled its obligations to provide a SIP that addresses the interstate transport provisions of CAA section 110(a)(2)(D)(i)(I) with respect to the 1997 and 2006 PM<sub>2.5</sub> NAAQS. Thus, EPA no longer has an obligation to (nor does EPA have the authority to) address those transport requirements through implementation of a FIP, and approval of these portions of the SIP revision eliminates Alabama units' obligations to participate in the federal CSAPR NO<sub>x</sub> Annual Trading Program and the federal CSAPR SO<sub>2</sub> Group 2 Trading Program. Elimination of Alabama units' obligations to participate in the federal trading programs includes elimination of the requirements to comply with the federally-established Phase 2 budgets capping allocations of CSAPR NO<sub>x</sub> Annual allowances and CSAPR SO<sub>2</sub> Group 2 allowances to Alabama units under those federal trading programs. As approval of these portions of the SIP revision eliminates requirements to comply with Alabama's remanded federally-established Phase 2 SO<sub>2</sub> budget and eliminates EPA's authority to subject units in Alabama to a FIP, it is EPA's opinion that finalization of approval of this SIP action addresses

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<sup>18</sup> See 76 FR 48208, 48210 (August 8, 2011).

<sup>19</sup> *EME Homer City Generation, L.P. v. EPA*, 795 F.3d 118, 138 (D.C. Cir. 2015).

the judicial remand of Alabama's federally-established Phase 2 SO<sub>2</sub> budget.<sup>20</sup>

Large electricity generating units in Alabama are subject to additional CSAPR FIP provisions requiring them to participate in the federal CSAPR NO<sub>x</sub> Ozone Season Trading Program. While Alabama's SIP submittal also seeks to replace the CSAPR FIP requirements addressing Alabama units' ozone-season NO<sub>x</sub> emissions, EPA is not acting on that portion of the SIP submittal at this time. Approval of this SIP revision concerning other CSAPR trading programs has no effect on any CSAPR FIP requirements applicable to Alabama units regarding ozone-season NO<sub>x</sub> emissions.

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

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<sup>20</sup> Although the court in *EME Homer City Generation* remanded Alabama's Phase 2 SO<sub>2</sub> budget because it determined that the budget was too stringent, nothing in the court's decision affects Alabama's authority to seek incorporation into its SIP of a state-established budget as stringent as the remanded federally-established budget or limits EPA's authority to approve such a SIP revision. *See* 42 U.S.C. 7416, 7410(k)(3).

- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [Insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and it shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 16, 2016.

Heather McTeer Toney

Regional Administrator,

Region 4.

40 CFR part 52 is amended as follows:

**PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401 *et seq.*

**Subpart B – Alabama**

2. Section 52.50(c) is amended by:

a. Adding seven new entries under “Chapter No. 335-3-5 Control of Sulfur Compound Emissions” for “335-3-5-.06”, “335-3-5-.07”, “335-3-5-.08”, “335-3-5-.11”, “335-3-5-.12”, “335-3-5-.13” and “335-3-5-.14” under each existing entry for “335-3-5-.06”, “335-3-5-.07”, “335-3-5-.08”, “335-3-5-.11”, “335-3-5-.12”, “335-3-5-.13” and “335-3-5-.14” in numerical and date order;

b. Adding in numerical order under “Chapter No. 335-3-5 Control of Sulfur Compound Emissions” new entries for “335-3-5-.09”, “335-3-5-.10”, and “335-3-5-.15” through “335-3-5-.36”;

c. Revising the title to Chapter No. 335-3-8;

d. Adding 21 new entries under “Chapter No. 335-3-8 Control of Nitrogen Oxides Emissions” for “335-3-8-.07”, “335-3-8-.08”, “335-3-8-.09”, “335-3-8-.10”, “335-3-8-.11”, “335-3-8-.12”, “335-3-8-.13”, “335-3-8-.14”, “335-3-8-.16”, “335-3-8-.17”, “335-3-8-.18”, “335-3-8-.20”, “335-3-8-.21”, “335-3-8-.23”, “335-3-8-.24”, “335-3-8-.25”, “335-3-8-.26”, “335-3-8-.27”, “335-3-8-.29”, “335-3-8-.30” and “335-3-8-.33”, under each existing entry for “335-3-8-.07”, “335-3-8-.08”, “335-3-8-.09”, “335-3-8-.10”, “335-3-8-.11”, “335-3-8-.12”, “335-3-8-.13”, “335-3-8-.14”, “335-3-8-.16”, “335-3-8-.17”, “335-3-8-.18”, “335-3-8-.20”, “335-3-8-.21”, “335-3-8-.23”, “335-3-8-.24”, “335-3-8-.25”, “335-3-8-.26”, “335-3-8-.27”,

“335-3-8-.29”, “335-3-8-.30” and “335-3-8-.33”, in numerical and date order; and

e. Adding in numerical order under “Chapter No. 335-3-8 Control of Nitrogen Oxides Emissions” new entries for “335-3-8-.15”, “335-3-8-.19”, “335-3-8-.22”, “335-3-8-.28”, “335-3-8-.31”, “335-3-8-.34”, “335-3-8-.35”, “335-3-8-.36”, “335-3-8-.37” and “335-3-8-.38”.

The additions and revision read as follows:

**§ 52.50 Identification of plan.**

\* \* \* \*

(c) \* \* \*

**EPA APPROVED ALABAMA REGULATIONS**

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	* *	*	*	*
<b>Chapter No. 335-3-5 Control of Sulfur Compound Emissions</b>				
* *	* *	*	*	*
Section 335-3-5-.06	TR SO <sub>2</sub> Trading Program-Purpose and Definitions	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.06 are included in the approved SIP
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Section 335-3-5-.07	TR SO <sub>2</sub> Trading Program-Applicability	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.07 are included in the approved SIP.
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Section 335-3-5-.08	TR SO <sub>2</sub> Trading Program-Retired Unit Exemption	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.08 are included in the approved SIP.
Section 335-3-5-.09	TR SO <sub>2</sub> Trading Program-Standard Requirements	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.10	TR SO <sub>2</sub> Trading Program-Computation of Time	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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Section 335-3-5-.11	Administrative Appeal Procedures	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.11 are included in the approved SIP.
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Section 335-3-5-.12	SO <sub>2</sub> Trading Budgets and Variability Limits	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.12 are included in the approved SIP.

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Section 335-3-5-.13	TR SO <sub>2</sub> Allowance Allocations	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.13 are included in the approved SIP
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Section 335-3-5-.14	Authorization of Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-5-.14 are included in the approved SIP
Section 335-3-5-.15	Responsibilities of Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

Section 335-3-5-.16	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.17	Certificate of Representation	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.18	Objections Concerning Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.19	Delegation by Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.20	Reserved	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

Section 335-3-5-.21	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.22	Recordation of TR SO <sub>2</sub> Allowance Allocations and Auction Results	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.23	Submission of TR SO <sub>2</sub> Allowance Transfers	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.24	Recordation of TR SO <sub>2</sub> Allowance Transfers	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.25	Compliance with TR SO <sub>2</sub> Emissions Limitation	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.26	Compliance with TR SO <sub>2</sub> Assurance Provisions	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

Section 335-3-5-.27	Banking	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.28	Account Error	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.29	Administrator's Action on Submissions	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.30	Reserved	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.31	General Monitoring, Recordkeeping, and Reporting Requirements	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.32	Initial Monitoring System Certification and Recertification Procedures	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

Section 335-3-5-.33	Monitoring System Out-of-Control Periods	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.34	Notifications Concerning Monitoring	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.35	Recordkeeping and Reporting	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-5-.36	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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<b>Chapter No. 335-3-8 Control of Nitrogen Oxides Emissions</b>				
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Section 335-3-8-.07	TR NOx Annual Trading Program-Purpose and Definitions	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.07 are included in the approved SIP
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Section 335-3-8-.08	TR NOx Annual Trading Program-Applicability	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.08 are included in the approved SIP
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Section 335-3-8-.09	TR NOx Annual Trading Program-Retired Unit Exemption	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.09 are included in the approved SIP
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Section 335-3-8-.10	TR NOx Annual Trading Program-Standard Requirements	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.10 are included in the approved SIP
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Section 335-3-8-.11	TR NOx Annual Trading Program-Computation of Time	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.11 are included in the approved SIP
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Section 335-3-8-.12	Administrative Appeal Procedures	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.12 are included in the approved SIP
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Section 335-3-8-.13	NOx Annual Trading Budgets and Variability Limits	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.13 are included in the approved SIP
* *	* *	*	*	*
Section 335-3-8-.14	TR NOx Annual Allowance Allocations	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.14 are included in the approved SIP
Section 335-3-8-.15	Reserved	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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Section 335-3-8-.16	Authorization of Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.16 are included in the approved SIP
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Section 335-3-8-.17	Responsibilities of Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.17 are included in the approved SIP
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Section 335-3-8-.18	Changing Designated Representative and Alternate Designated Representative; Changes in Owners and Operators; Changes in Units at the Source	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.18 are included in the approved SIP
Section 335-3-8-.19	Certificate of Representation	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.19 are included in the approved SIP
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Section 335-3-8-.20	Objections Concerning Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.20 are included in the approved SIP
* *	* *	*	*	*
Section 335-3-8-.21	Delegation by Designated Representative and Alternate Designated Representative	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.21 are included in the approved SIP

Section 335-3-8-.22	Reserved	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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Section 335-3-8-.23	Establishment of Compliance Accounts, Assurance Accounts, and General Accounts	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.23 are included in the approved SIP
* *	* *	*	*	*
Section 335-3-8-.24	Recordation of TR NOx Annual Allowance Allocations and Auction Results	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.24 are included in the approved SIP
* *	* *	*	*	*
Section 335-3-8-.25	Submission of TR NOx Annual Allowance Transfers	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.25 are included in the approved SIP
* *	* *	*	*	*
Section 335-3-8-.26	Recordation of TR NOx Annual Allowance Transfers	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.26 are included in the approved SIP
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Section 335-3-8-.27	Compliance with TR NOx Annual Emissions Limitation	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.27 are included in the approved SIP
Section 335-3-8-.28	Compliance with TR NOx Annual Assurance Provisions	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
* *	* *	*	*	*
Section 335-3-8-.29	Banking	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.297 are included in the approved SIP
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Section 335-3-8-.30	Account Error	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.30 are included in the approved SIP
Section 335-3-8-.31	Administrator's Action on Submissions	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
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Section 335-3-8-.33	General Monitoring, Recordkeeping, and Reporting Requirements	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	Both sections of 335-3-8-.33 are included in the approved SIP
Section 335-3-8-.34	Initial Monitoring System Certification and Recertification Procedures	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-8-.35	Monitoring System Out-of-Control Periods	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-8-.36	Notifications Concerning Monitoring	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-8-.37	Recordkeeping and Reporting	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	
Section 335-3-8-.38	Petitions for Alternatives to Monitoring, Recordkeeping, or Reporting Requirements	11/24/2015	[Insert date of publication in <u>Federal Register</u> ] [Insert citation of publication]	

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